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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Hobbes C. Lavey,
10 Plaintiff,
11 v.
12 Julie Ann Mata, et al.,
13 Defendants.
14

No. CV 25-00950-PHX-MTM

REPORT AND RECOMMENDATION

15 TO THE HONORABLE STEPHEN M. McNAMEE, SENIOR UNITED STATES
16 DISTRICT JUDGE:

17 Pending before the Court is Plaintiff's First Amended Complaint. (Doc. 10.) This
18 Report and Recommendation is filed pursuant to General Order 21-25.¹ On March 24,

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20 ¹ General Order 21-25 states in relevant part:

21 When a United States Magistrate Judge to whom a civil action has been
22 assigned pursuant to Local Rule 3.7(a)(1) considers dismissal to be
23 appropriate but lacks the jurisdiction to do so under 28 U.S.C. § 636(c)(1)
due to incomplete status of election by the parties to consent or not consent
to the full authority of the Magistrate Judge,

24 IT IS ORDERED that the Magistrate Judge will prepare a Report and
25 Recommendation for the Chief United States District Judge or designee.

26 IT IS FURTHER ORDERED designating the following District Court
27 Judges to review and, if deemed suitable, to sign the order of dismissal on
my behalf:

28 Phoenix/Prescott: Senior United States District Judge Stephen M. McNamee
....

1 2025, Plaintiff filed a Complaint and Application for Leave to Proceed In Forma Pauperis.
2 (Docs. 1, 2.) The Complaint named six Defendants, including, two superior court judges,
3 a court-appointed advisor, a private investigations firm, Maricopa County, and the State of
4 Arizona. (Doc. 1.) Plaintiff also named six Doe Defendants that Plaintiff identified as
5 “sworn peace officers and/or judges and/or clerks and/or investigators.” (*Id.*) Although
6 Plaintiff claimed violations of his Constitutional rights, much of what he alleged was
7 related to a state court domestic dispute. (*Id.*) Plaintiff requested damages totaling over
8 \$4,000,000.00. (*Id.*)

9 Upon screening, the Court stated that it “is unable to discern what specific claims
10 Plaintiff intends to assert against the named Defendants.” (Doc. 9.) The Court found that
11 Plaintiff failed to identify facts or connect any allegations to any Defendant, or indicate
12 how any of the Defendant’s actions give rise to civil liability. (*Id.*) The Court dismissed
13 the Complaint, and gave Plaintiff 21 days to file an amended complaint. (*Id.*)

14 Plaintiff filed his Amended Complaint on May 12, 2025. (Doc. 10.) Plaintiff again
15 names the same six Defendants - two superior court judges, a court-appointed advisor, a
16 private investigations firm, Maricopa County, and the State of Arizona. (*Id.*) In addition,
17 Plaintiff re-names the six Doe Defendants identified as “sworn peace officers and/or judges
18 and/or clerks and/or investigators.” (*Id.*) Plaintiff’s allegations again relate to a state court
19 domestic dispute. (*Id.*) His claims appear to be connected to his dissatisfaction with state
20 court proceedings and ruling related to his parental rights. (*Id.*) Plaintiff seeks over
21 \$4,000,000.00 in damages, as well as, the immediate return of his daughter and restoration
22 of his parental rights. (*Id.*)

23 As this Court has previously advised, with respect to in forma pauperis proceedings,
24 the Court shall dismiss such action at any time if it determines that:

25 (A) the allegation of poverty is untrue; or

26 (B) the action or appeal –
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(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2); *see also Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th Cir. 2000) (28 U.S.C. § 1915(e) “applies to all in forma pauperis complaints,” not merely those filed by prisoners). The Court must therefore dismiss an in forma pauperis complaint if it fails to state a claim or if it is frivolous or malicious. *Lopez*, 203 F.3d at 1127 (“It is also clear that section 1915(e) not only permits but requires a district court to dismiss an in forma pauperis complaint that fails to state a claim.”).

Furthermore, Rule 8 of the Federal Rules of Civil Procedure provides that a complaint must include: (1) “a short and plain statement of the grounds for the court’s jurisdiction,” (2) “a short and plain statement of the claim showing that the pleader is entitled to relief,” and (3) “a demand for the relief sought.” Fed. R. Civ. P. 8(a). The short and plain statement for relief “need not contain detailed factual allegations; rather, it must plead ‘enough facts to state a claim to relief that is plausible on its face.’” *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“The plausibility standard . . . asks for more than a sheer possibility that a defendant has acted unlawfully”).

Rule 8 also “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation,” *Iqbal*, 556 U.S. at 678, and “conclusory allegations of law and unwarranted inferences are not sufficient,” *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998). Moreover, “[e]ach allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1). Where a complaint contains the factual elements of a cause, but those elements are scattered throughout the complaint without any meaningful organization, the complaint does not set forth a “short and plain statement of the claim” for purposes of Rule 8. *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988). Thus, a complaint may be dismissed where it lacks a cognizable legal theory, lacks sufficient facts to support a cognizable legal claim, or contains allegations disclosing some absolute defense or bar to

1 recovery. *See Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988);
2 *Weisbuch v. County of L.A.*, 119 F.3d 778, 783, n.1 (9th Cir. 1997).

3 Once again, Plaintiff's Amended Complaint contains only brief, conclusory
4 allegations of fact, and fails to allege sufficient facts to support any legitimate claim against
5 Defendants.

6 Further, under the *Rooker-Feldman* doctrine, the federal district courts lack
7 jurisdiction to review alleged errors in state-court decisions. *D.C. Court of Appeals v.*
8 *Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Tr. Co.*, 263 U.S. 413 (1923). This means
9 that a federal court may not exercise jurisdiction over "cases brought by state-court losers
10 complaining of injuries caused by state-court judgments rendered before the district court
11 proceedings commenced and inviting district court review and rejection of those
12 judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).
13 This jurisdictional bar extends to actions that are *de facto* appeals from state court
14 judgments where the federal claims "are inextricably intertwined with the state court's
15 decision such that the adjudication of the federal claims would undercut the state ruling or
16 require the district court to interpret the application of state laws or procedural rules."
17 *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008). The *Rooker-Feldman*
18 doctrine bars such claims "even where the party does not directly challenge the merits of
19 the state court's decision but rather brings an indirect challenge based on constitutional
20 principles." *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900-01 n.4 (9th Cir. 2003). Plaintiff's
21 apparent challenge to the termination of his parental rights is barred by the *Rooker-*
22 *Feldman* doctrine, if there has been a final adjudication in the state court terminating his
23 parental rights.

24 Similarly, it is well settled that federal courts should abstain from adjudicating
25 domestic relations cases currently pending in the state courts. *See Peterson v. Babbitt*, 708
26 F.2d 465, 466 (9th Cir. 1983) (per curiam). Even if the case raises constitutional issues,
27 abstention is proper if the case, at its core, involves a domestic relations or child custody
28 dispute. *Coats v. Woods*, 819 F.2d 236, 237 (9th Cir. 1987); *see H.C. v. Koppel*, 203 F.3d

1 610, 613 (9th Cir. 2000) (explaining that a civil rights action alleging that a state court
2 violated plaintiff's due process rights in a custody proceeding "is precisely the type of case
3 suited to *Younger* abstention [*Younger v. Harris*, 401 U.S. 37 (1971)]"). However,
4 abstention generally only applies to actions for injunctive and declaratory relief.
5 *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 718-19 (1996). Abstention, therefore,
6 applies to preclude this Court from granting the injunctive relief requested by the Plaintiff,
7 if state court proceedings are pending regarding the apparent termination of his parental
8 rights.

9 Lastly, Plaintiff appears to sue Defendants in their official capacities, which is no
10 different from a suit against the State itself. If against the State, all claims must be dismissed
11 because it is immune from suit under the Eleventh Amendment and because it is not a
12 "person" subject to liability under 42 U.S.C. § 1983. The Eleventh Amendment to the
13 United States Constitution immunizes states from being sued in federal court by their own
14 citizens or by citizens of another state, absent consent to be sued, and Congress did not
15 abrogate Eleventh Amendment immunity when enacting 42 U.S.C. § 1983. *Will v.*
16 *Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989). Plaintiff's claims, whether
17 injunctive or for monetary damages, against Defendants for acting in their official capacity
18 is in fact a suit against the State and barred by the Eleventh Amendment. *Pennhurst State*
19 *School & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984).

20 For these reasons, the Court will recommend that Plaintiff's Amended Complaint
21 be dismissed. Furthermore, the Court finds the deficiencies in the Amended Complaint
22 cannot be cured by amendment and will recommend that Plaintiff's Amended Complaint
23 be dismissed without leave to amend. *See Schucker v. Rockwood*, 846 F.2d 1202, 1203-04
24 (9th Cir. 1988) ("Dismissal of a pro se complaint without leave to amend is proper only if
25 it is absolutely clear that the deficiencies of the complaint could not be cured by
26 amendment."); *see also Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (affirming
27 dismissal with prejudice where district court had instructed pro se plaintiff regarding
28 deficiencies in prior order dismissing claim with leave to amend); *Ascon Props., Inc. v.*

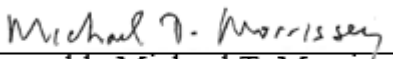
1 *Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989) (“The district court’s discretion to deny
2 leave to amend is particularly broad where plaintiff has previously amended the
3 complaint.”).

4 Accordingly,

5 **IT IS THEREFORE RECOMMENDED** that Plaintiff’s Amended Complaint
6 (Doc. 10) and this matter be dismissed without leave to amend.

7 This Report and Recommendation is not an order that is immediately appealable to
8 the Ninth Circuit Court of Appeals. Any notice of appeal under Federal Rule of Appellate
9 Procedure 4(a)(1) should not be filed until entry of the District Court’s judgment. The
10 parties have fourteen days from the date of service of this Report and Recommendation to
11 file specific, written objections with the Court. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P.
12 6(a), 6(b) and 72. Thereafter, the parties have fourteen days to respond to the objections.
13 Failure to timely object to the Magistrate Judge’s Report and Recommendation may result
14 in the District Court’s acceptance of the Report and Recommendation without further
15 review. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Failure to
16 timely object to any factual determinations of the Magistrate Judge may be considered a
17 waiver of a party’s right to appellate review of the findings of fact in an order of judgment
18 entered pursuant to the Magistrate Judge’s Report and Recommendation. *See* Fed. R. Civ.
19 P. 72.

20 Dated this 22nd day of August, 2025.

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22 
23 Honorable Michael T. Morrissey
24 United States Magistrate Judge
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